

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

NOV 10 2010

JULIA C. DUDLEY, CLERK
BY: *J. C. Dudley*
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DONALD ROBERT PILCHER,
Petitioner,

Civil Action No. 7:10-cv-00503

v.

MEMORANDUM OPINION

COMMONWEALTH OF VIRGINIA,
Respondent.

By: Hon. James C. Turk
Senior United States District Judge

Donald Robert Pilcher, a Virginia inmate proceeding pro se, filed a motion for relief from his state court judgment, pursuant to Rule 60(b) with the United States District Court for the Eastern District of Virginia. That District Court construed petitioner's pleading as a petition for a writ of habeas corpus, pursuant to 28 U.S.C. § 2254, and transferred the petition to this court. See Christianson v. Colt Indus. Operating Corp., 486 U.S. 800, 815-16 (1988). This construed petition is presently before the court for preliminary review, pursuant to Rule 4 of the Rules Governing § 2254 Cases.

In his petition, petitioner complains that his state court convictions from Roanoke County violated his constitutional rights. However, court records indicate that petitioner previously filed a § 2254 petition concerning the same conviction. See Pilcher v. Johnson, No. 7:05-cv-00696, slip op. at 1 (W.D. Va. Mar. 10, 2006) (granting motion to dismiss on habeas petition concerning rape and indecent liberties conviction from the Circuit Court for the County of Roanoke); Pilcher v. Johnson, No. 7:05-cv-00688, slip op. at 1 (W.D. Va. Mar. 9, 2006) (granting motion to dismiss habeas petition concerning three incest convictions from the Circuit Court for the County of Roanoke). Thus, the petitioner's current petition is a subsequent one, falling under the prohibition in 28 U.S.C. § 2244(b) against a second or successive petition.

Pursuant to this section, a federal district court may consider a second or successive § 2254 petition only upon specific certification from the United States Court of Appeals for the Fourth Circuit that the claims in the petition meet certain criteria. 28 U.S.C. § 2244(b). Because

the petitioner has not submitted any evidence that he has obtained such certification by the Court of Appeals, the court dismisses the petition without prejudice as successive.* Based upon the finding that the petitioner has not made the requisite substantial showing of denial of a constitutional right as required by 28 U.S.C. § 2253(c)(1), a certificate of appealability is denied. The Clerk is directed to send copies of this memorandum opinion and the accompanying order to the petitioner.

ENTER: This 10th day of November, 2010.



Senior United States District Judge

*A Fourth Circuit form and instructions for filing a request for certification to file a subsequent petition are available from the Fourth Circuit at the following address: Office of the Clerk, United States Court of Appeals for the Fourth Circuit, 900 E. Main St., Richmond, VA 23219.